[ORIGINAL CIVIL JURISDICTION]

HORNE, J.

June 10, 1938.

AHNA MOONA MUTHURAMAN CHETTIAR (Substituted under Order of Court herein dated 25th October 1935).....Plaintiffs.

vs.

K. N. NAIR & ORS.....Defendants.

[SINGAPORE SUIT No. 600 of 1932]

[SUMMONS IN CHAMBERS No. 359 of 1938].

Practice—Order for payment of judgment debt by instalments—whether operative as a bar to other processes of execution—Civil Procedure Code, 1907, *S.* 665 (*R.S.C. Order* 40 *Rule* 30 (3)).

An order made under S. 665 of the Civil Procedure Code, 1907, corresponding to R. S. C. 0.40 r.30 (3) for payment of the judgment debt by monthly instalments operates as a bar to any other process of execution in respect of the unpaid balance of the judgment debt, and while such an order is in operation and the payments thereunder are being made, a judgment creditor is not entitled to issue a Writ of Seizure and Sale.

SUMMONS IN CHAMBERS.

Chidson, for the plaintiff (respondent).

Menon, for second defendant (applicant).

Cur. Ad. Vult.

HORNE, J.—This is an application by way of Summons in Chambers to set aside a writ of seizure and sale. The applicant is one of the four defendants against whom a judgment was given in 1932, and he was under an order made in 1933 paying instalments of the judgment debt. The original order was applied for under section 658 of the Civil Procedure Code and under section 665, (*ibid*) the Court ordered instalments which have been varied from time to time. Under the order now current the judgment debter is not in default.

The current order has been made under Order 40 rule 30 (3) and the question is whether that instalment order prevents the judgment creditor from having resort to other means of execution in respect of the unpaid balance of the judgment debt.

Such an order as the present instalment order may be enforced in the same manner as a judgment to the same effect 0.40 r.22.

By order 40 r.16 " Every person to whom a sum of money or any costs are payable, shall, as soon as the money or costs are payable, be entitled to sue out one or more writ or writs of seizure and sale subject nevertheless as follows:—

(a) If the judgment or order is for payment within a period therein mentioned, no such writ as aforesaid shall be issued until after the expiration of such period;

(b) The Court or Judge may at any time after the time of giving judgment or making the order stay execution until such time as it or he thinks fit."

The right to sue out the writ depends upon something being payable under the judgment or order and if a time is fixed for payment then by proviso (a) the writ cannot issue until the time expires.

It is useful to compare an instalment order made under Debtors Ordinance and with one made under 0.40 r.30 (3). In the former case it requires statutory authority to keep other forms of execution alive. Section 6 (2) provides that an instalment order under Part 1 of the Debtors Ordinance shall not be a bar to proceedings in execution. But an order under 0.40 r.30 (3) clearly falls within the proviso (a) to 0.40 r.16 and there is no statutory procedure leaving other forms of execution open to the judgment creditor while the instalment order is in force.

It is true that in the laws of the Colony as Mr. Chidson points out there is no similar statutory provision to section 61 of the Execution Act, 1844. But that statute when examined relates to procedure in the same way as Order 40 does. Sections 60, 61 and 62 of that Act should be considered together and do not force me to adopt the view that a statutory prohibition against execution is necessary here. The order for instalments is a judgment and is the enforceable judgment until it is discharged when the original judgment becomes enforceable. The English cases; *Jones* v. *Jenner,* 25 L.J. Ex. 319; *Montgomery* v. *de Bulmes,* (1898) 2 Q.B. 420, and *Woodham Smith* v. *Edwards,* (1908) 2 K.B. 899 appear to establish the principle that where the judgment creditor adopts the procedure of obtaining an instalment order the judgment debtor is protected from execution for more than one instalments in arrear. Where the debtor is poor even on High Court judgments the instalment order is obtained in the County Court, generally in the district where the debtor resides because his means can more easily be ascertained there and because costs of execution are lower. But the principle is the same in whatever Court the judgment is sought to be executed and was adopted in the considered judgment and in *Re a Judgment Debtor,* 51 T.L.R. 524.

The judgment creditor in this case if he thinks a writ of seizure and sale more effective can apply to have the instalment order discharged but while it is in operation and the payments are being made, he is not, on my reading of the appropriate rules in Order 40 entitled to a writ of seizure and sale.

Order accordingly.

Solicitors for the Plaintiff—*Allen & Gledhill.*

Solicitor for the Defendant—*K. P. K. Menon.*